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AB 163

Mr. Chairman and members of the committee, thank you for the opportunity to testify today as the author of Assembly Bill 163. I'm happy to say that not only is AB163 a simple bill, it also a bill that enjoys bipartisan support.

To give the committee some background, we need to take a look back to 1991 and Act 162. That Act required most persons that were transferring residential real estate to disclose to potential buyers any material defects that would have a significant adverse effect on the value of the property; that would significantly impair the health or safety of future occupants of the property; or that if not repaired, removed or replaced would significantly shorten or adversely affect the expected normal life of the premises.

In my time in real estate sales, I found this tool to be incredibly important in that just by filling out the form it helped sellers remember defects in the property that they may otherwise have overlooked in their discussions with the buyer. It also served as a confidence booster for potential buyers because they felt somewhat assured that by completing this form the sellers had identified potential problems and that the buyers had the information they needed to proceed with the transaction. This has also been a form that has been useful in the rare cases that end up in a dispute in court.

As useful as this has been, it has left a large part of the real estate market without a similar requirement for disclosure, namely sales of vacant land. One might question the need for a disclosure report for vacant land, but it is becoming more and more critical to address this. The Realtors Association, to their credit, developed a vacant land condition report of their own that has been used for a number of years. While it is not a report that is currently required by the state, it is a report that is used whenever vacant land is sold through a Realtor. This report addresses issues such as underground storage tanks, any encumbrances on the land, planned public improvements, special assessments and other matters that affect the value and/or use of the property.

Assembly Bill 163 simply seeks to treat the sales of vacant land with the same gravity that we give to sales of residential real estate by requiring all sellers to provide prospective buyers with the information they need to make an informed decision when purchasing a piece of land.

Thanks again for the opportunity to testify, I would appreciate the support of the committee moving forward and I would be happy to answer any questions you may have.



WISCONSIN REALTORS® ASSOCIATION

John P. Horning, Chairman
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William Malkasian, President
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Memorandum

To: Members, Assembly Housing Committee

From: Tom Larson, WRA's Chief Lobbyist and Director of Legal and Public Affairs

Date: June 22, 2011

Re: AB 163 -- Vacant Land Condition Report

The Wisconsin REALTORS® Association (WRA) supports AB 163, legislation that requires sellers of vacant land to complete a vacant land condition report (VLCR) at the time of sale.

Background

Current law requires sellers of 1-4 family dwellings to complete a real estate condition report and disclose any known defects about the property to prospective buyers prior to the time the buyer purchases the property. Over the years, this disclosure requirement has helped buyers become better informed about the condition of a property before the time of sale. As a result, fewer conflicts between buyer and seller have resulted due to undisclosed defects related to a property's condition.

Why A Vacant Land Condition Report Is Necessary

The following are reasons why the current real estate condition report requirements should be extended to transactions involving vacant land:

- **Sellers of vacant land are in the best position to know about their property.** Similar to transactions involving 1-4 family dwellings, adverse conditions affecting the vacant land are often known by the seller and are unknown and cannot be easily determined by the buyer prior to purchasing the land. Requiring sellers of vacant land to disclose known defects about the property will help buyers become better informed about a property's condition before they purchase the property.
- **More regulations affecting vacant land.** More regulations at both the federal and state levels are being adopted that affect how vacant land can be used, where development can occur, and the type and amount of fees paid for certain activities.
- **More disclosure requirements.** To achieve better compliance with these regulations and to reduce the number of lawsuits filed by buyers who were unaware of these requirements, the Wisconsin Legislature has imposed a number of new disclosure obligations upon sellers of vacant land. For example, owners of vacant land have an obligation to disclose any known penalties under the use value law, and whether the property is enrolled in the managed forest program.



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- **Not all disclosures can be incorporated into the Offer to Purchase.** While most of the required disclosures have been incorporated into the WB 13 -- Vacant Land Offer to Purchase, the Offer does not contain all of the necessary disclosure obligations, nor should it, given that including ALL the required disclosures would make the Offer considerably longer and more difficult for parties to use.
- **Negative consequences may result if disclosures are not made.** If the seller fails to make the necessary disclosures, the buyer may have the ability to rescind an Offer or may sue the seller, depending upon the nature of the disclosure. A mandatory VLCR may assist sellers in making the necessary disclosures and avoid potential liability.

Questions and Answers About AB 163

- **Who must complete the VLCR?** All sellers of vacant land EXCEPT for persons who are exempt under current law (personal representatives, trustees, conservators, and fiduciaries appointed by a court. See Wis. Stat. § 709.01(2).
- **When must a seller provide a VLCR to a prospective buyer?** The seller must provide a VLCR to a prospective buyer no later than 10 days after the seller has accepted an offer to purchase.
- **What are the penalties for not completing a VLCR on time?** The only penalty for failing to complete a VLCR on time is buyer rescission of the offer to purchase. Under the bill, a buyer may rescind the offer to purchase, if (a) the buyer does not receive a VLCR on time, (b) the VLCR is incomplete, or (c) the VLCR discloses a defect of which the buyer was not aware. (Note – other laws may require the seller to disclose information on the VLCR and thus impose other penalties for failing to disclose the information)
- **Where did the disclosures come from?** The proposed disclosures in AB 163 are modeled after the disclosures contained in the Seller Disclosure Report - Vacant Land produced by the WRA. The WRA's report has been in use for over 20 years, and contains most of the required disclosures that are common in vacant land transactions.
- **Does this form create new disclosure obligations or liability for the seller?** No. Under Wisconsin common law, sellers of real property have a duty to disclose material adverse facts related to the property to prospective buyers. See e.g., *Ollerman v. O'Rourke Co., Inc.* 94 Wis. 2d 17, 288 N.W.2d 95 (1980). Generally, a material adverse fact is information that would affect a reasonable buyer's decision to purchase the property. See *id.* In addition, state statutes currently require sellers to disclose certain information to prospective buyers (e.g., use value assessments, enrollment in managed forest law program). Accordingly, most of the items listed in the VLCR are arguably material adverse facts that must be disclosed with or without the form.

If you have any questions or if you need additional information, please contact us at (608) 241-2047.